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10/051,821	01/17/2002	Tom Balamucki	60,446-184; 01ZFM009/010,	1202
26096	7590	03/18/2004		EXAMINER
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009				KRAMER, DEVON C
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 20040310

Application Number: 10/051,821

Filing Date: January 17, 2002

Appellant(s): BALAMUCKI ET AL.

MAILED

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GROUP 3600

Anthony Cho
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 19, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-11 and 21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

Claims 1 and 21 contain(s) substantial errors as presented in the Appendix to the brief. Accordingly, claims 1 and 21 are correctly written in the Appendix to the Examiner's Answer.

(9) *Prior Art of Record*

5,758,543	Bair	06-1998
JP3134367	Onoguchi et al	6-1991

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11 and 21 are rejected under 35 U.S.C. 112. This rejection is set forth in prior Office Action, Paper No. 09/16/03.

Claims 1-6, 8-11 and 21 are rejected under 35 U.S.C. 102. This rejection is set forth in prior Office Action, Paper No. 09/16/03.

Claims 1, 7-9 and 21 are rejected under 35 U.S.C. 102. This rejection is set forth in prior Office Action, Paper No. 09/16/03.

(11) *Response to Argument*

A. Claims 1-11 are rejected under 35 USC 112, second paragraph.

Claims 1-11 and 21 were rejected for using the term "dimension" instead of the term "axis" in claims 1 and 21. This rejection was made in order to have applicant more clearly define what the inventive aspect is and to ensure the consistency of the language in the application. The terms " three dimension" and "three axis" are only the same when the axes or dimensions are orthogonal. Applicant never claims that the axes are orthogonal. Applicant has defined the term dimension as, "Any of the least number

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of independent coordinates required to specify a point in space uniquely." There are a number of different methods to determine a point in space. Applicant argues an XYZ coordinate system as relating to the three different dimensions claimed, but please note that there are also polar coordinate systems where things can differ in three different dimensions (i.e. 5, 6, 30 degrees). It is in this context that the examiner rejected to the term dimension as being a broad term.

B. Claim 21 is rejected under 35 USC 112, second paragraph.

Claim 21 uses the same term "dimension" as stated above in section A of this answer.

Again applicant relates the X-axis and Y-axis as being associated with the term dimension, but does not claim that these are the axis in which the "dimensions" are referring.

C. Claims 1-6, 8-11 and 21 are rejected under 35 USC 102(b) based on Bair (US5758543).

Please note that applicant makes no mention of the term dimension in the specification, instead the term "axis" is used. Applicant argues that Bair only teaches an adjustment of the center of gravity in only one dimension and not three. Please note that in Bair the center of gravity is adjusted in both an X direction and a Y direction and further adjusted by an angle relative to the pivot. The term three dimensions does not directly mean three orthogonal axes or XYZ coordinates. As stated in the rejection, it was stated that, "The positioning of the third location is all relative to how a person looks at the device". This comment was made to try and point out to the applicant that there are a number of different ways to have three dimensions (i.e. polar coordinates) For

example the three dimensions can be $z=4, x=-2$, and an angle of 100 degrees relative to the pivot.

D. Claim 4 is rejected under 35 USC 102(b) based on Bair (US5758543).

It should be seen in Bair that the shift lever (31) has a first center of mass above the counterweight (52) and the counterweight as a second center of mass. If you combine the two structures you end up with a center of mass somewhere in between the lever and the counterweight.

E. Claim 5 is rejected under 35 USC 102(b) based on Bair (US5758543).

Because the first location of the center of mass of the shift lever is vertically higher than that of the counterweight, the total center of mass is going to have a center of mass that is vertically lower than the first vertical location.

F. Claim 6 is rejected under 35 USC 102(b) based on Bair (US5758543).

Applicant argues that Bair does not teach an adjustment of the center of mass in both a horizontal and a vertical direction. Please note that the shift lever of Bair has a center of mass that is at a vertical location higher than that of the counterbalance. The counterbalance is at a location offset from the shift lever in the horizontal direction.

Because these two items separately have different vertical and horizontal locations, the total center of mass is going to have a different center in both the vertical and horizontal directions.

G. Claim 21 is rejected under 35 USC 102(b) based on Bair (US5758543).

Applicant states that Bair does not have a third location that is different from the first location in two different horizontal directions. Bair does move the center of gravity in the forward direction and further by an angle relative to the pivot.

H. Claims 1, 7-9 and 21 are rejected under 35 USC 102(b) based on Onoguchi et al (JP 3134367).

Applicant states that a proper rejection can not be made without a proper translation of the Onoguchi et al reference. The claim limitations are clearly met by Onoguchi et al by using the drawings and the abstract alone, a translation was not considered necessary because of this. Applicant states that Onoguchi does not have a total center of mass at a third location that is different from the first location in three different directions. The lever 16 of Onoguchi is going to have a first center of mass and the counterweight 18 is going to have a second center of mass. Thus the total center of mass for the two objects is going to be somewhere in between these two members, differing from the first location in a horizontal direction, a vertical direction, and differing in an angle measured from the pivot.

I. Claim 7 is rejected under 35 USC 102(b) based on Onoguchi et al (JP 3134367).

Applicant argues that item 14 is not a resilient member. Clearly, item 14 is some type of elastomeric member ad is therefor a resilient member.

J. Claim 21 is rejected under 35 USC 102(b) based on Onoguchi et al (JP 3134367).

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Applicant argues that Onoguchi does not prove a counterbalance that offsets the center of mass of the shift lever in two different horizontal directions. The argument here is the same as that made in section G.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

DK *Den 72 3-11-04*
March 12, 2004

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